

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0097, James Clarke v. Robert Teeling, the court on March 17, 2005, issued the following order:

The defendant, Robert Teeling, appeals an order of the trial court finding him to be the agent of the property owner and liable for \$8000 in damages to the plaintiff, James Clark, for denying him entry to his apartment for eight days. The defendant contends that the trial court erred in imposing damages against him as the agent rather than against the landlord. We reverse.

RSA 540-A:1 (1997) defines landlord as “an owner, lessor or agent thereof who rents or leases residential premises including manufactured housing or space in a manufactured housing park to another person.” RSA 540-A:3, II, prohibits a landlord from denying a tenant access to his leased premises other than through proper judicial process. RSA 540-A:4, IX states that a landlord who violates RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10. See Carter v. Lachance, 146 N.H. 11, 14 (2001).

We will assume without deciding that the defendant was the agent of the property owner, see Restatement (Second) of Agency § 1(1) (1958) (agency is fiduciary relation resulting from manifestation of consent by one person to another that other shall act on his behalf and subject to his control and consent by other so to act). That finding alone, however, is insufficient to assess damages against the defendant. The record contains no evidence that the defendant was responsible for denying the plaintiff access to his leased premises. When presented with the eviction notice, the defendant stated that he had not posted it and had not seen it before the proceeding in the trial court. The plaintiff testified that when he was locked out, he called the property owner; he offered no evidence that he had ever contacted the defendant about the changed locks or that the defendant was responsible for changing them. While the property owner, as a principal, may be liable for the acts of his agent, see 3 Am. Jur. 2d Agency § 2 (2002), we are aware of no authority that would support holding the defendant, as an agent, liable for the acts of his principal in this case. Because the record contains no evidence that the defendant violated RSA 540-A:3, we conclude that the trial court erred in assessing damages against him.

Reversed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**

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